IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11837 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESHUBHAI BHAGWANBHAI SAGAR

Versus

NEW INDIA ASSURANCE CO.LTD.

Appearance:

1. Special Civil Application No. 11837 of 2003

MR PJ KANABAR for Petitioner No. 1

MR PV NANAVATI for Respondent No. 1

MR VIBHUTI NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 06/10/2003

ORAL JUDGEMENT

Heard learned advocate Shri Kanabar appearing for

the petitioner and learned advocate Shri P.V. Nanavaty appearing for the respondent insurance company.

2. At the outset, learned advocate Shri Nanavaty appearing for the respondent has submitted that the respondent has no objection if the amount in question is permitted to be withdrawn or the FDR is permitted to be encashed prematurely.

3. Learned advocate Shri Kanabar appearing for the petitioner has submitted that it is absolutely necessary for the petitioner to undergo another operation because steel rods are to be taken out from the left leg of the petitioner which had to be inserted due to the accident which had taken place. According to him, the concerned doctor, who had operated the petitioner for the first time, has opined that second operation is inevitable and it should be performed at an early date.

4. It has been further submitted by him that it is not possible for the petitioner, who is a retired employee of the Gujarat State Transport Corporation, to raise substantial amount of about Rs.25,000/- required for the operation, and if he is constrained to borrow the said amount, the petitioner will have to pay substantial amount by way of interest. It has been, therefore, submitted by him that the petitioner be permitted to get the FDR encashed even if he has to suffer some loss of interest.

5. Looking to the facts of the case, and more particularly when second operation is inevitable, in my opinion, the petitioner should be permitted to encash the FDR prematurely because it would be too much to ask the petitioner to wait till 15.7.2007, the date on which the FDR is due to mature. It is pertinent to note that the award has not been challenged by the respondent and the respondent-Insurance Company has no objection if the FDR is permitted to be encashed.

6. Looking to the facts of the case, the impugned order passed in M.A.C.P No. 80/1999 dated 11.6.2003 is quashed and set aside and the petitioner is permitted to get the FDR for Rs. 30,977/- encashed prematurely.

The petition stands disposed of as allowed. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

(hn)